**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**O. O. C. J.**

SUMMARY SUIT NO.1212 OF 2006

M/s.Welport Trading Co.Pvt.Ltd. ...Plaintiff.
Versus
M/s. Tristar Polyster. ...Defendant.

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Mr. G.M. Jain for the Plaintiff.
None for the Defendant.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

March 26, 2007.

**P.C.:**

The suit has been instituted under Order 37 of the Code of Civil Procedure, 1908, for the recovery of an amount of Rs.2,23,68,654/- together with interest. The Plaintiff sold, supplied and delivered to the Defendant imported yarn between 29th July 2002 and 5th December 2002. An amount of Rs.3,13,73,687/- was due and payable of which an amount of Rs.90,05,033/- has been paid. The balance due is Rs.2,23,68,654/-. High Seas Sale Agreements were entered between the parties copies of which are annexed at Exh.C1 to C18 to the Plaint. The Defendant took delivery of the goods after payment of Government dues including custom duties. Two post dated cheques dated 29th August 2004 and 30th August 2004 issued by the Defendant were dishonoured

on presentation.

The Defendant has been served with the writ of summons, but has not entered appearance. An affidavit of service has been filed. The Plaintiff has filed a compilation of the original documents on the basis of which the claim in the suit has been proved. The claim falls within the purview of of the provisions of Order 37 of the Code of Civil Procedure, 1908. The Plaintiff is entitled to a decree as the Defendant failed to enter appearance despite service of the writ of summons. The suit is accordingly decreed in terms of prayer clause (a), subject to the modification that the Plaintiff shall be entitled to interest at the rate of 9% per annum from the date of the suit until payment or realisation.

Refund of Court fee, if any, as per rules.

Certified copy of the decree expedited.

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